

December 1, 2008 - Regular Town Council Meeting

At a Regular Meeting of the Town Council of the Town of Middletown, RI, held at the Middletown Town Hall on Monday, December 1, 2008 at 7:00 P.M.

Council President Christopher T. Semonelli, Presiding

Vice Chairman Richard Cambra

Councillor Frank A. Bozyan

Councillor M. Theresa Santos

Councillor Edward J. Silveira, Jr.

Councillor Robert J. Sylvia

Councillor Barbara A. VonVillas, Members Present

ACTING AS A BOARD OF LICENSE COMMISSION

Councillor Silveira recused himself from acting on the following item of business, due to a possible conflict of interest.

1. Public Hearing (Advertised)

Applications received from the following named persons, firms or corporations for RENEWAL of Alcoholic Beverage Licenses for the 2008-2009 licensing year. (See attached list)

Public Hearing was declared open.

Councillor Santos questioned if all applicants were tips certified.

Responding to Councillor Santos, Town Clerk Wendy Marshall noted that state law mandates that all applicants must be tips certified before a license may be issued.

There being no other person desiring to be heard, public hearing was declared closed.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to grant said license renewals.

CONSENT CALENDAR

Councillor Santos requested that item #10 be heard under the Town Council portion of the docket.

Councillor Sylvia requested that items #6, #7 and #11 be heard under the Town Council portion of the docket.

1. Approval of Minutes – Regular Meeting, November 3, 2008.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to approve said minutes.

2. Approval of Minutes – Special Meeting, November 12, 2008.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to approve said minutes.

3. Approval of Minutes – Special Meeting, November 16, 2008.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to approve said minutes.

4. Approval of Minutes – Inauguration, November 17, 2008.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to approve said minutes.

5. Approval of Minutes – Special Meeting, November 22, 2008.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to approve said minutes.

6. Memorandum of Town Administrator, re: Freeze on spending.

Antone Viveiros, 110 Indian Hill Road, addressed the Council noting his support for the suggested constraints, however, also suggests no overtime except for emergencies and putting Town projects on hold.

Councillor Sylvia noted his support for the Town Administrator taking the freeze on spending step at this time.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said memorandum.

7. E-mail communication of Councillor Sylvia, with enclosures, re: Requesting certification of Council vote for Property Tax Abatement Program for the Elderly to be forwarded to local legislators.

On motion of Councillor Silveira, duly seconded, it was voted unanimously to receive said email communication.

Antone Viveiros, 110 Indian Hill Road, expressed appreciation to Councillor Sylvia for recommending this Property Tax Abatement

Program for the Elderly.

Councillor Santos supports the proposal, however, is concerned that some residents may not realize that they cannot have a dual residence.

On motion of Councillor Sylvia, duly seconded, it was voted unanimously to approve said program and forward to the local legislators for legislation.

8. Memorandum of Town Administrator, with enclosures, re: Food Stamp Program Outreach.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said memorandum.

9. Memorandum of Town Administrator, with enclosures, re: Budget Deadline for Library.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said memorandum.

10. Memorandum of Town Administrator, with enclosure, re: Letter from Martin Luther King, Jr. Center.

Councillor Santos thanked all who have donated canned goods and requests continued support of the food bank.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said memorandum.

11. Memorandum of Town Administrator, with enclosures, re: Police

Station Progress Report #4.

Antone Viveiros, 110 Indian Hill Circle, addressed the Council expressing concern with the change orders that have been approved.

Town Administrator Shawn Brown noted a previous report supplied by Chief Pesare relating to the change orders will be distributed to Mr. Viveiros and current Council members.

Councillor Santos expressed concern that the cost of the Police Station project is increasing.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said memorandum.

12. Memorandum of Town Administrator, with enclosures, re: CCR

Audit and Financial Statements for GHGRI.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said memorandum.

13. Communication of Town Administrator, with enclosures, re: Tax Collector's Report for period ending October 31, 2008.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said communication and report.

14. Communication of Town Administrator, with enclosures, re: Financial Statements for period ending September 30, 2008.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said communication and financial statements.

15. Communication of the Finance Director, with enclosures, re: Cancellation of taxes for certain Middletown taxpayers.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said communication.

16. Resolution of the Council, re: Authorizing cancellation of taxes for certain Middletown taxpayers.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to pass said resolution.

17. Communication of Tax Assessor, with enclosures, re: Cancellation of taxes for certain Middletown taxpayers.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said communication.

18. Resolution of the Council, re: Authorizing cancellation of taxes for certain Middletown taxpayers.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to pass said resolution.

19. Notice of Public Hearing received from the Zoning Board of Review, Petition of Norman Bird Sanctuary, owner, for an Appeal from Article 3 Section A – Appeal the Notice of Unsafe Structure issued by the Building Official on November 6, 2008, on real estate located at Third Beach Road, TAP 131, Lot 1.

On motion of Vice Chairman Cambra, duly seconded, it was voted

unanimously to receive said notice.

20. Application of Bucks & Dough Enterprises, Inc. d/b/a Domino's Pizza, 19 West Main Road, for RENEWAL of Victualling House License for the 2008-2009 licensing year.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to grant said license renewal.

21. Memorandum of Arthur S. Weber, Jr., Chairman, Middletown Planning Board, re: Requesting the Town Council to consider amending the Middletown Zoning Ordinance, Section 602, Table 6-1-Zoning Districted Permitted Uses regarding "Church or other place of worship". (Requires advertising for Public Hearing)

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said memorandum and advertise the proposed amendment for hearing to be held at the January 5, 2009

regular meeting of the Council.

22. Memorandum of Arthur S. Weber, Jr., Chairman, Middletown Planning Board, with enclosures, re: Proposed amendment to the Middletown Zoning Ordinance – Wind Energy Conversion Facilities. (Requires advertising for Public Hearing)

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said memorandum and advertise the proposed amendment for hearing to be held at the January 20, 2009 regular meeting of the Council.

23. Memorandum of Arthur S. Weber, Jr., Chairman, Middletown Planning Board, with enclosures, re: Request for advisory recommendation on a proposal to amend the Middletown Zoning Ordinance, Article 4 and Article 22 regarding Senior Independent Living Facilities. (Requires advertising for Public Hearing)

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said memorandum and advertise the proposed amendment for hearing to be held at the January 5, 2009 regular meeting of the Council.

TOWN COUNCIL

Councillor Silveira recused himself from the following item of business, due to a possible conflict of interest.

- 1. Application of Jan and Michelle Eckhart dba Sweet Berry Farm, 915 Mitchell's Lane, for a Victualling House License for the 2008-2009 licensing year. (NEW)**

On motion of Councillor Sylvia, duly seconded, it was voted unanimously to grant said license, contingent upon Building Official, Fire Marshall, Board of Health and Public Works approvals.

2. Memorandum of Arthur S. Weber, Jr., Chairman, Middletown Planning Board, re: Planning Board advisory recommendation on a proposal to amend the Middletown Zoning Ordinance Section 602, Table 6-1, Zoning District Permitted Uses, regarding two-family dwellings (duplex).

Councillor Silveira noted his support of the Planning Board recommendation that the proposed amendment regarding the two-family dwellings (duplex) not be adopted.

Town Planner Ronald Wolanski addressed the Council reviewing the previous Council meeting when the Council requested the Planning Board opinion. Mr. Wolanski noted that this type of change could add several hundred dwelling units and is not consistent with the Town's Comprehensive Plan.

On motion of Councillor Santos, duly seconded, it was voted unanimously to receive said memorandum.

3. Memorandum of Arthur S. Weber, Jr., Chairman, Middletown Planning Board, re: Request of the Town Council for an advisory recommendation on a proposal to amend the Middletown Zoning Ordinance Section 602, Zoning District Permitted Uses, regarding Day nursery school, kindergarten, or other agency giving daycare.

Councillor Sylvia and Councillor Silveira noted their support of the Planning Board recommendation that the proposed amendment regarding Day nursery school, kindergarten, or other agency giving daycare not be adopted.

Carol Cummings, 738 Indian Avenue, addressed the Council noting that she does not agree with the Planning Board.

On motion of Councillor Santos, duly seconded, it was voted unanimously to receive said memorandum.

4. Communication of Arthur S. Weber, Jr., Chairman, Middletown Planning Board, re: Requesting approval of proposed amendments to the Rules and Regulations regarding Subdivision and Development of Land.

Arthur Benner, 3 Namquid Drive, noted that when serving on the Roads and Unities Committee, the committee suggested that all utility establishments supply in writing that work has been completed. Mr. Benner is concerned with projects not being completed.

On motion of Councillor Silveira, duly seconded, it was voted unanimously to receive said communication.

On motion of Councillor Silveira, duly seconded, it was voted unanimously to approve the proposed amendments to the Rules and Regulations regarding Subdivision and Development of Land.

5. Continued from Special Meeting, November 22, 2008

Communication of Arthur S. Weber, Jr., Chairman, Middletown Planning Board, re: Establishing a sub-committee for Middletown Comprehensive Community Plan.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said communication.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to establish a sub-committee for the Middletown Comprehensive Community Plan Update.

On motion of Councillor VonVillas, duly seconded, it was voted unanimously to appoint Vice Chairman Cambra to the Middletown Comprehensive Community Plan Update Committee.

On motion of Councillor Santos, duly seconded, it was voted

unanimously to appoint Councillor VonVillas to the Middletown Comprehensive Community Plan Update Committee.

Council requested the Town Clerk to notify the Zoning Board of Review, Conservation Commission, Open Space & Fields Committee, Beach Commission, Economic Development Advisory Committee and Roads & Utilities Advisory Committee requesting representation from the committees for the newly established Comprehensive Community Plan Update Committee.

6. Communication of Antone Viveiros, 110 Indian Hill Road, re: Request to address the Council pertaining to the scheduling of Saturday meetings of the Town Council.

Antone Viveiros, 110 Indian Hill Road, noted his concern with the Council scheduling Saturday meetings and the public being unable to speak at the meetings. Mr. Viveiros believes the business conducted should have been conducted at a regular meeting.

Councillor Silveira, responding to Mr. Viveiros' concerns noted that the meeting was a transitional meeting and that was the only time the meeting could be held. He also noted this is all part of the process of working together.

On motion of Councillor Silveira, duly seconded, it was voted unanimously to receive said communication.

7. Communication of Antone Viveiros, 110 Indian Hill Road, re: Request to discuss potential loss of State reimbursement of tax rate stabilization monies.

Antone Viveiros, 110 Indian Hill Road, noted that he covered all his remarks when speaking about the Town Administrator's memo to Freeze spending.

On motion of Vice Chairman Cambra, duly seconded, it was voted

unanimously to receive said communication.

8. Communication of Town Administrator, re: FY2009 Fee Increases.

Town Administrator Shawn Brown noted that the fee increases within the next (4) four ordinances are fees that were approved by the previous Council. If the ordinance is not adopted, then the FY2009 budget will change.

Councillor Santos expressed concern of the fee increases for taxpayers which are struggling to pay their bills and requests that the beach rates not increase.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said communication.

9. An Ordinance of the Town of Middletown (First Reading)

An ordinance in amendment to the Town Code of the Town of Middletown, Title III Administration, Chapter 36 Fee Schedule, Section (33) Beach Fees.

On motion of Vice Chairman Cambra, duly seconded, it was voted to receive said ordinance on its first reading; Councilor Santos voted NO to said motion.

10. An Ordinance of the Town of Middletown (First Reading)

An ordinance in amendment to the Town Code of the Town of Middletown, Title III Administration, Chapter 36 Fee Schedule, Section (34) Campground Fees.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said ordinance on its first reading.

11. An Ordinance of the Town of Middletown (First Reading)

An ordinance in amendment to the Town Code of the Town of Middletown, Title III Administration, Chapter 36 Fee Schedule, Section (51) Public Safety Private Detail Billing Rates.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said ordinance on its first reading.

12. An Ordinance of the Town of Middletown (First Reading)

An ordinance in amendment to the Town Code of the Town of Middletown, Title V Public Works, Chapter 50 Garbage and Refuse, Section (50.44) Obligations of Residents.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said ordinance on its first reading.

13. Memorandum of Town Administrator, with enclosures, re: Rhode Island Energy Aggregation Program (REAP).

Town Administrator Shawn Brown noted that the previous Council approved Dan Beardsley to negotiate electricity for the Town.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said memorandum.

14. Resolution of the Council, re: Authorizing Execution of the Electricity Supply Contract and Membership Participation Agreement.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to pass said resolution.

15. Communication of Town Administrator, with enclosures, re: Award of contract for Middletown/Newport SPF Media Consultant.

Antone Viveiros, 110 Indian Hill Road, questioned the project.

Town Administrator Shawn Brown explained that Middletown is working with the City of Newport on this project/contract, each community will contribute \$50,000. The project is intended for community outreach to address the issue of underage drinking.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said communication.

16. Resolution of the Council, re: Award of contract for Middletown/Newport SPF Media Consultant.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to pass said resolution.

**17. Communication of Town Administrator, with enclosures, re:
Award of contract for Pavement Management - Asphalt Patching.**

Town Administrator Shawn Brown reviewed the contract for Pavement Management – Asphalt Patching noting the contract will repair roads within the Town. The Department of Public Works has identified roads in need of repair.

Councillor Bozyan questioned the cost of police detail identified in the proposal.

Responding to Councillor Bozyan, Town Administrator Shawn Brown noted that the police detail is taken care of internally. The bid was prepared by the City of Newport and the police are not part of the

contract.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said communication.

18. Resolution of the Council re: Award of contract for Pavement Management – Asphalt Patching.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to pass said resolution.

19. Communication of Town Administrator, with enclosures, re: Award of contract for Linden School Asbestos Abatement & Demolition. (The proposal referenced in the communication is on file in the Office of the Town Clerk.)

Manuel Mello, 31 Beacon Terrace North, noted that he does not agree with this bid. Mr. Mello questioned if the bid includes all work necessary for the project to be completed. Mr. Mello requests the Council not to act on this award of contract at this time.

Town Engineer Warren Hall addressed the Council noting that he has met with the bidder and the total scope of the project has been covered in this bid.

Town Administrator Shawn Brown noted that the Town does require a performance bond for the project.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said communication.

20. Resolution of the Council, re: Award of contract for Linden School Asbestos Abatement & Demolition.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to pass said resolution.

21. Communication of Town Administrator, with enclosures, re: FY2008 Refuse & Recycling Fund deficit.

Town Administrator Shawn Brown explained that currently there is a deficit within the FY2008 Refuse & Recycling Fund and the resolution will appropriate money from the general fund to eliminate this deficit. The Town has a three (3) year contract with Waste Management and we are now in year two (2), however, negotiations are continuing.

Councillor VonVillas questioned when the appropriate time to review the Refuse & Recycling Fund.

Responding to Councillor VonVillas, Town Administrator Shawn

Brown noted that the Refuse & Recycling Fund would be reviewed each year at budget time. Mr. Brown noted he does not recommend this fund be attached to the tax rate.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said communication.

22. Resolution of the Council, re: Approving transfer from General Fund to the Refuse & Recycling Fund.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to pass said resolution.

23. Continued from Regular Meeting November 3, 2008.

Resolution of the Council, re: Arsenic Remediation Standards. (NO DOCUMENTATION)

On motion of Councillor Bozyan, duly seconded, it was voted unanimously to continue this matter.

24. Communication of Councillor Sylvia, re: Safety Awareness Program for Residents Using Alternate Heating Options.

Councillor Sylvia read his communication entered here:

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said communication.

On motion of Councillor Sylvia, duly seconded, it was voted unanimously to award \$7,500. to fund a consolidate Safety Awareness Program by our School Department and Fire Department.

25. Communication of Councillor VonVillas, re: Requesting to form a subcommittee to develop a policy related to Civility.

Councillor VonVillas reviewed her communication noting that she feels it appropriate to implement a policy/program related to civility.

Town Solicitor Michael W. Miller requested the matter be referred to the Solicitor and he will work with Councillor VonVillas on the matter.

On motion of Councillor Santos, duly seconded, it was voted unanimously to receive said communication.

On motion of Councillor Silveira, duly seconded, it was voted unanimously to refer the matter to develop a civility policy to the Town Solicitor Michael W. Miller.

26. Communication of Frank Arakel Bozyan, re: Resignation from the Board of Tax Assessment Review.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said communication and accept said resignation with regret.

27. Communication of Vice Chairman Cambra, re: Resignation from the Middletown Zoning Board of Review and Middletown Economic Development Advisory Committee.

On motion of Councillor Sylvia, duly seconded, it was voted unanimously to receive said communication and accept said resignation with regret.

28. Memorandum of Town Clerk, re: Appointment of Alternate Municipal Court Judge and Alternate Probate Judge.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said memorandum.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to appoint Michael W. Miller as alternate Municipal Court Judge.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to appoint Peter B. Regan as alternate Probate Judge.

29. Appointment of one (1) member to the Middletown Technology Advisory Committee for a term expiring September 2009.

On motion of Councillor Santos, duly seconded, it was voted unanimously to reappoint George H. Steele to said board, for a term

expiring September 2009.

30. Appointment of one (1) member to the Open Space and Fields Committee for a term expiring November 2011.

Vice Chairman Cambra expressed the importance to establish a process to appoint committee members to the various boards/committees. Mr. Cambra requests the Council to consider the process used by Burrillville.

Councillor Silveira noted his agreement however believes that the Council should move forward with the appointment to the Open Space and Fields Committee and forward the request to establish a process to appoint committee members to the Town Solicitor and Town Administrator.

On motion of Councillor Silveira, duly seconded, it was voted unanimously to request the Town Solicitor and Town Administrator to

review and recommend a process to be established for appointing committee members to various boards and committees.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to appoint Nicholas Coogan to said board, for a term expiring November 2011.

31. Appointment of one (1) member to the Personnel Board for a term expiring December 2010.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to reappoint Edward W. McCarthy, Jr. to said board, for a term expiring December 2010.

32. Continued from Special Meeting, November 22, 2008.

Request of Town Administrator, re: Establishment of Budget Advisory Sub-Committee.

Town Administrator Shawn Brown noted that this committee would enable him to have more discussion pertaining to the budget with Council members before he submits the budget to the entire Council.

Antone Viveiros, 110 Indian Hill Road, addressed the Council expressing his support for this type of sub-committee, however, believes that other communities have members of the public on the committee.

It was the consensus of the Council to support the establishment of this sub-committee.

On motion of Councillor Bozyan, duly seconded, it was voted unanimously to receive said request and establish a Budget Advisory Sub-Committee to assist the Town Administrator on the Town's Capital Improvement Plan and annual budget prior to its submission the Town Council.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to appoint Councillor Sylvia to the Budget Advisory Sub-Committee.

On motion of Council President Semonelli, duly seconded, it was voted unanimously to appoint Councillor Bozyan to the Budget Advisory Sub-Committee.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to appoint Council President Semonelli to the Budget Advisory Sub-Committee.

33. Continued from Special Meeting, November 22, 2008

**Memorandum of Town Administrator, with enclosures, re:
Establishment of Audit Committee.**

Town Administrator Shawn Brown explained that because of new audit standards this committee should be established and would need to meet immediately.

On motion of Councillor Silveira, duly seconded, it was voted unanimously to receive said memorandum and establish an Audit Committee.

On motion of Councillor Sylvia, duly seconded, it was voted unanimously to appoint Councillor Silveira to the Audit Committee.

On motion of Council President Semonelli, duly seconded, it was voted unanimously to appoint Councillor VonVillas to the Audit Committee.

On motion of Councillor Silveira, duly seconded, it was voted

unanimously to appoint Council President Semonelli to the Audit Committee.

Antone Viveiros, 110 Indian Hill Road, noted that he does not support the establishment of the proposed Audit Committee because he believes the Town Council should not be involved. Mr. Viveiros believes the committee should consist of one Council member and two members of the public.

34. Communication of Eric Godin, Athletic Director, Middletown High School, re: Request for support by placing an ad in the Winter Athletic Program.

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to receive said communication.

On motion of Councillor Silveira, duly seconded, it was voted unanimously to approve a ¼ page ad (cost \$195.) in the Middletown

High School Winter Athletic Program to be appropriated from the Council's Discretionary Fund.

35. Adoption of Rules of the Council.

Vice Chairman Cambra suggested that item #26 within the Council rules be amended to state that "All items of business for the Council docket shall be filed with the Council Clerk not later than 12:00 P.M. on the Tuesday prior to the following Monday meeting of the Council."

On motion of Vice Chairman Cambra, duly seconded, it was voted unanimously to adopt said Rules of the Council, as amended.

PUBLIC FORUM SESSION

Pursuant to Rule 23 of the Rules of the Council, Citizens may address

the town on one (1) subject only, said subject of substantive Town business, neither discussed during the regular meeting nor related to personnel or job performance. Citizens may speak for no longer than five (5) minutes and must submit a public participation form to the Council Clerk prior to the start of the meeting.

No one addressed the Council during this session.

On motion of Councillor Sylvia, duly seconded, it was voted unanimously to adjourn this meeting at 8:50 P.M.

Wendy J.W. Marshall, CMC

Council Clerk